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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/696,465

10/25/2000

Charles C. Birkner

4034

31688

7590

04/03/2006

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EXAMINER

VAN DOREN, BETH

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/696,465

Applicant(s)

BIRKNER ET AL.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02/23/2006, which is the BPAI Decision.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a non-final office action in response to the decision rendered by the Board of Patent Appeals and Interferences on 02/23/2006. In light of decision, prosecution has been reopened in regard to claim 7.

Please note that the rejections of claims 1-6 and 8-20 were affirmed by the Board of Patent Appeals and Interferences (See page 16 of the Decision); therefore the respective rejections (last presented in the Examiner's Answer, dated 10/13/2004) are maintained and prosecutions on the merits is closed in regard to claims 1-6 and 8-20. Consequently, claims 1-6 and 8-20 stand rejected as established on the grounds of res judicata.

The rejections regarding claim 7 (as presented in the Appeal Brief, dated 06/14/2005) has been revised, as set forth below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-6, 8-12, and 14-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Meridian Project Systems, Inc. (www.mps.com), archived by archive.org between 12/1999-01/2000. These claims are rejected using the same art and rationale set forth in the final rejection of 03/03/2004.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meridian Project Systems, Inc. (www.mps.com) in view of Smith ("Figuring profit must include equipment costs").

As per claim 7, Meridian Project Systems, Inc. discloses a system wherein the handheld computer collects equipment information, including summary information by company (See page 1, sections 1-4, page 3, section 2, page 11, and page 15, section 5, wherein the handheld computer collects equipment type).

However, Meridian Project Systems, Inc., does not expressly disclose that this information includes type, quantity, hours in use and stand-by hours.

Smith discloses that equipment information includes type, quantity, hours in use and stand-by hours (See page 1, section 1, page 2, sections 1-2, page 3, sections 1-2, wherein equipment information including individual pieces of equipment by type being tracked per job, including in use and standby hours).

Meridian Project Systems, Inc. discloses collecting and reporting information about equipment used in a construction project. Smith discloses field reporting per individual machine per job including usage and standby hours. It would have been obvious to one of ordinary skill in the art at the time of the invention to include type, quantity, hours in use and stand-by hours in

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the information collected and transmitted by Meridian Project Systems, Inc. in order to increase the accuracy and the detail of the information collected and stored in the system. See page 1, section 2, of Meridian Project Systems, Inc. that discusses the importance of accurate and detailed information. See also Smith, page 3, sections 2-3, which also discusses accurately collecting job cost data and accurately allocating equipment based on reported data.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meridian Project Systems, Inc. (www.mps.com).

Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meridian Project Systems, Inc. (www.mps.com) using the same art and rationale set forth in the final rejection of 03/03/2004.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wu et al. (U.S. 6,256,550) teaches an equipment effectiveness monitor, measuring information such as use and idle time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



bvd

March 21, 2006



D. Beck, TC 3600